STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 42. August 3, 1934

1. WINERY LICENSES - FORTIFIED WINES - WINE CORDIALS
BLEND - DEFINED
FORTIFY - DEFINED
TREAT - DEFINED

July 27, 1934

Vintnors & Distillers Corp.,
Egg Harbor City, N. J.

Gentlemen:

I have your affidavit of July 12th, 1934, setting forth that "In addition to the regular wines produced by us by fermentation and fortification, such as, port, sherry, muscatel, etc., we also treat the wines by adding flavorings, such as, peach, apricot, blackberry, etc., to these wines. We call the finished product a wine cordial which in reality is a pure wine with no other ingredients but flavor".

Ruling is requested whether the above process is permitted under your Plenary Winery License.

The terms of your license provide that you may manufacture any fermented wines and blend, fortify and treat wines.

To blend is to mix or mingle different grades, varieties, or brands whether for purposes of adulteration or to produce a certain flavor or bouquet.

To fortify is to strengthen, and as regards beverages, means to add alcohol or otherwise to increase the alcoholic contents beyond that which is obtained by nature fermentation.

To treat is to manipulate; to subject to some action or processes.

It is therefore ruled that the process above described is within the terms of your license.

Nothing in this ruling shall affect any requirements with respect to artificial flavor or proper labelling.

Very truly yours,

D. Frederick Burnett,
Commissioner

2. WAREHOUSES - TRANSFER - MAY BE RELOCATED SAME AS LICENSED PREMISES

July 27, 1934

Mr. James D. Courtney,
Hightstown, N. J.

Dear Sir:

I have yours of July 20th.

Permission may be granted to transfer the location of a warehouse, providing the same procedure is followed as in transferring a license.

Herewith form of application to be filled out in duplicate. The amount of deposit to accompany application shall be Five ($5.00) Dollars.

Publication of notice of intention to apply for such transfer should be started immediately. Investigation will follow in the regular manner and, if such transfer is approved, permission will be endorsed on the face of your license.

I am submitting your question as to your right to bottle in the warehouse to the Commissioner for a ruling.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

By: B. Carlton Brown,
Inspector-in-Chief.

3. WAREHOUSES - USE - WAREHOUSES MAY BE USED FOR CONDUCT OF ANY PART OF LICENSED BUSINESS AS WELL AS FOR STORAGE PURPOSES.

July 27, 1934.

James D. Courtney, Esq.,
Hightstown, N. J.

Dear Sir:

Mr. Brown submits for ruling your question as to whether you may conduct a bottling room upon your proposed relocated warehouse after permission shall have been given to effect the transfer concerning which he has written you.

The first point to establish is whether you, as a distiller, have any right to bottle in any warehouse whatsoever. As a distiller you do have the right to blend and bottle - also "to maintain a warehouse". Strictly speaking a warehouse is nothing but a storehouse. The public warehouse license is so defined. Chap. 44, P.L.1934. I see no reason, however, for a strict construction in the case of a warehouse incidental to your distillery license or any other manufacturing license. If the warehouse is part of or adjacent to the licensed premises, there is no reason inconsistent with proper control why the warehouse must be utilized solely for the purpose of storing goods. Economic reasons may require that a part of the storage building be utilized to conduct an integral part of your manufacturing business. It is therefore ruled that, excepting public warehouses, manufacturers may conduct any integral part of their licensed business in their licensed warehouse.

It follows that it may be conducted upon the warehouse which has been relocated after proper transfer has been effected.

This ruling applies, of course, only so far as the State law is concerned. You are still subject to all necessary Federal regulations and permits.

Very truly yours,

D. Frederick Burnett,
Commissioner

4. RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO NEW JERSEY - RULE #3 MODIFIED.

July 27, 1934

Messrs. Wolber, Gilhooly and Yauch,
11 Commerce Street,
Newark, N. J.

Dear Sirs:

Previous to the promulgation by this department of its rules governing the transportation of alcoholic beverages into New Jersey, a public conference was held attended by all branches of the industry. At this conference, representatives of New Jersey warehouses declared that their interests would be adequately taken care of by an exception permitting the shipment, by licensed New Jersey transporters, to licensed warehouses, of alcoholic beverages not intended for sale or use in New Jersey. This is embodied in exception #3 of the rules promulgated July 2, 1934. (Bull. 39, Item 1.)

The actual operation of this exception, however, has resulted in unfair discrimination against New Jersey licensed warehouses. It has caused foreign dealers, who are shipping alcoholic beverages to licensed New Jersey manufacturers and wholesalers within the first exception of the rules promulgated July 2, 1934, to store their alcoholic beverages, awaiting shipment, with warehouses outside the State and has completely deprived New Jersey warehouses of the opportunity of handling such business.

Proper control and full collection of taxes will in no-wise be interfered with by a modification of exception #3 in a manner obviating the foregoing difficulty. Accordingly, effective immediately, exception #3 of the rules governing the transportation of alcoholic beverages into New Jersey, promulgated July 2, 1934 (Bull. 39, Item 1), has been ordered by the Commissioner abrogated and replaced by the following:

> 3.- Alcoholic beverages may be brought into New Jersey by a licensed transporter where they are being delivered to a licensed public warehouse for temporary storage, and awaiting ultimate delivery without this state, or within this state to licensed manufacturers and wholesalers.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By: Nathan L. Jacobs,
Counsel-in-Chief.

5. BULLETIN ITEMS - ITEM SUPERSEDED.

Rule #3 governing transportation of alcoholic beverages into New Jersey, set forth in Bulletin 39, Item 1, is superseded by Bulletin 42, Item 4.

6. APPELLATE DECISIONS - NOBILI VS. TRENTON.

GUSTAVO NOBILI,)
Appellant
-vs-) ON APPEAL
CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF TRENTON,
Respondent.)
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Gustavo Nobili, Pro Se.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory, and unreasonable.

Respondent further contends that the application was properly denied for the reason that the number of licensed places of business in the vicinity of appellant's premises renders an additional license socially undesirable. This contention, ordinarily one of great force, cannot be sustained as an after-thought where, as here, respondent improperly excluded appellant from any consideration when the licenses in the vicinity were issued. The salutary administration of the liquor law which forbids an inordinate number of licenses in a given vicinity must be applied consistently with and not in contravention of the fundamental public policy which requires that selection of applicants be based upon acceptable principles and not grounded on arbitrary procedure.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Dated: July 31, 1934. Commissioner

7. APPELLATE DECISIONS - SCHWARTZ VS. KINGWOOD.

STEVE SCHWARTZ,)
Appellant
-vs-)
ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS
TOWNSHIP OF KINGWOOD
(HUNTERDON COUNTY),)
Respondent.
- - - - - - - - - - - - - - -)

Steve Schwartz, Pro Se.
No appearance for Respondent.

BY THE COMMISSIONER:

Appellant has complied with all the conditions precedent to the granting of his license. At the hearing on the appeal, favorable testimony was introduced as to his character and the suitability of the premises sought to be licensed. No appearance was entered for respondent and no witnesses testified against appellant. There was no defense whatsoever to the appeal.

On this record, appellant is entitled to his license. He has presented a prima facie case. The failure of the respondent to appear at the hearing on appeal and assign a reason why the license should not be granted, indicates its action was arbitrary and unreasonable in the first instance. Powell vs. City Council of Bridgeton, Bulletin #30, Item #5.

The action of the respondent is, therefore, reversed, but inasmuch as the fee was not accepted by the township clerk, such reversal is upon the express condition that appellant pay to respondent the proper prorated portion of the license fee prior to the issuance of the license.

D. FREDERICK BURNETT,
Dated: August 1, 1934. Commissioner

8. APPELLATE DECISIONS - WIZNER VS. KINGWOOD.

ABOLONIA WIZNER,
Appellant
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KINGWOOD (HUNTERDON COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

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Fordyce E. Suderly, Esq., Attorney for Appellant.
No appearance for Respondent.

BY THE COMMISSIONER:

The factual situation in this case is substantially the same as in Schwartz vs. Kingwood, Bulletin #42, Item #7. Hence the decision would have been the same, if it were not for the facts next mentioned.

After the one-sided hearing on this appeal and pending the determination of the case, complaints were made to the Commissioner that appellant was engaging in the sale of alcoholic beverages without awaiting his ruling and without any license. The report of an Inspector-in-Chief of the Department, sent specially with a squad of agents to investigate this complaint, confirmed its accuracy. It was established as a fact that appellant was selling alcoholic beverages without a license in defiance of the law.

While ordinarily, on an appeal, the evidence of unfitness is produced by respondent, yet where, as here, conclusive proof of the fact is furnished by the Commissioner's own investigation, he will refuse on his own motion, not only to grant a license, but also to order anyone else to do so.

The appeal is, therefore, dismissed.

D. FREDERICK BURNETT,
Dated: August 1, 1934. Commissioner

9. APPELLATE DECISIONS - LEVY VS. TRENTON

LOUIS A. LEVY,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Sidney D. Beck, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory and unreasonable.

Respondent further contends that the application was properly denied on the ground that the premises sought to be licensed are not presently suitable. Before filing his application, appellant discussed with respondent certain proposed alterations. He was advised by a member of the respondent Board that he would be permitted to file his application together with a plan of the proposed changes, and that in the event the application were granted, the failure to make the alterations would constitute a ground for revocation. The plans were properly filed. There is no suggestion that the proposed alterations would not render the premises entirely suitable.

Inasmuch as respondent led appellant to believe that the suitability of the premises would be considered in the light of the proposed alterations, respondent will not be heard to assert that the premises in their present condition are unsuitable.

The action of respondent is reversed upon the express condition that appellant alter his premises in accordance with the plans filed with respondent, prior to the issuance of the license.

Dated: August 3, 1934.

D. FREDERICK BURNETT
Commissioner

10. APPELLATE DECISIONS - LA FERRARA VS. TRENTON

NICHOLAS LA FERRARA,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL

CONCLUSIONS

Vincent A. deBenedetto, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935 was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory and unreasonable.

Respondent further contends that the premises sought to be licensed are unsanitary in that there is only one lavatory for the accommodation of both sexes. Appellant had offered to install an additional lavatory but was advised by a member of the respondent Board not to do so before the license was issued. This offer was repeated at the hearing.

The action of the respondent Board is reversed upon the express condition that appellant install an additional lavatory in the premises prior to the issuance of the license.

D. FREDERICK BURNETT,
Dated: August 3, 1934 Commissioner

11. APPELLATE DECISIONS - TORRETTI VS. TRENTON

TAIDE TORRETTI, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Joseph J. Felcone, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory and unreasonable.

Respondent further contends that the application was properly denied on the ground that the premises sought to be licensed are unfit. It is admitted, however, that after the issuance of the prior license appellant intended to make certain alterations but refrained from doing so on respondent's advice. A copy of the proposed plans were filed with the respondent. There is no suggestion that these would not render the premises entirely suitable.

Inasmuch as respondent led appellant to refrain from making the indicated repairs, respondent will not be heard to assert that the premises in their present condition are unsuitable.

The action of respondent is reversed upon the express condition that appellant alter her premises in accordance with the plans filed with respondent, prior to the issuance of the license.

D. FREDERICK BURNETT,
Commissioner

Dated: August 3, 1934

12. APPELLATE DECISIONS - CAPUTI VS. TRENTON

VINCENT CAPUTI, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Rudolph A. Socey, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935 was denied. An appeal was duly filed and has come on for hearing.

Respondent sets forth in its answer that appellant violated the condition upon which the prior license had been issued, to wit, that appellant discontinue the candy and soda business prior to selling any alcoholic beverages. The evidence, however, is clear that the sale of alcoholic beverages was not commenced until June 27, 1934, before which date the candy and soda business had been discontinued. The condition, therefore, was complied with.

The remaining issues are identical with those in the case of Nobili vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #42, Item #6. They cannot be successfully invoked against appellant for the reasons therein expressed.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 3, 1934.

13. APPELLATE DECISIONS - SHAPIRO VS. TRENTON

BENJAMIN SHAPIRO,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Samuel Leventhal, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied for the reason that appellant had failed to comply with the condition upon which the prior license had been issued, namely, that the archway between the licensed premises and the adjoining store be closed and the two places of business be kept separate and distinct. It appears that shortly after the issuance of the license, appellant advised respondent in a letter that the archway had been closed by a partition but that said partition contained a small door used only by appellant and his sister in going to and from their living quarters, and offered to remove said door in the event respondent so desired. This letter was not answered. Appellant renewed his offer at the hearing. It is evident that appellant has made a bona fide effort to comply with the condition.

The remaining issues are identical with those in Nobili vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #42 Item #6. They cannot be successfully invoked against appellant for the reasons therein expressed.

The action of the respondent Board is reversed upon the express condition that the door now existing in the partition be permanently closed before the issuance of the license.

Dated: August 3, 1934.

Commissioner